

January 31, 2001

Only Two Attorneys General Rejected in Two Centuries

Feingold: For Ashcroft

Yesterday, the U.S. Senate Judiciary Committee favorably reported to the full Senate the nomination of John Ashcroft to serve as Attorney General. If the nomination were rejected, it would be only the third time in history the Senate rejected the President's selection to head the Justice Department. As Judiciary Committee Ranking Member Leahy himself once said, "I think most senators will agree that the standard we apply in the case of executive branch appointments is not as stringent as that for judicial nominees. The president should get to pick his own team. Unless the nominee is incompetent or some other major ethical or investigative problem arises in the course of our carrying out our duties, then the president gets the benefit of the doubt."

Here's what Senator Feingold (D-WI), who supported the nomination, had to say about cabinet nominations in their historical context:

As a matter of practice, the Senate has, for the most part, avoided rejecting the President's Cabinet nominations because of their ideology alone. The Senate may examine and has examined whether the extremity of nominees' views might prevent them from carrying out the duties of the office they seek to occupy, and I can imagine such a scenario. But the Senate has nearly uniformly sought to avoid disapproving nominations because of their philosophy alone, and I believe that we should not begin to do so now.

As my colleagues know, in the practices and precedents of the Senate, the Senate considers and approves the overwhelming majority of nominations as a matter of routine. Over the history of the Senate, the Senate has considered and approved literally millions of nominations. The Senate's voting to reject a nominee has been an exceedingly rare event. Of the 1.7 million nominees received by the Senate in the last 30 years, the Senate has voted to reject just four, or one in every 425,000. Of course, presidents often withdraw without a vote some nominations who are likely to face defeat.

Now, Mr. Chairman, the Senate's voting to reject a nominee to the Cabinet has been an even more exceedingly rare event. Over the entire history of the Senate, the Senate has voted to reject only nine nominations by the President's Cabinet. The Senate rejected six in the 19th century and three in the 20th century. Four of the nine Cabinet nominations rejected were during the presidency of President Tyler

alone. Several other rejections may have said to flowed from larger battles between the Senate and the president, as when the Senate rejected President Jackson's nominee to be the secretary of treasury in the wake of a dispute over the Bank of the United States. Similarly, bad feelings after the impeachment of President Andrew Johnson led to the Senate's rejection of President Johnson's nomination of his counsel in the impeachment trial to be attorney general. In the 20th century, the Senate rejected half as many Cabinet nominees as it did in the 19th century. In the wake of the Teapot Dome scandal, the Senate voted down President Coolidge's nomination of Charles Warren because of ties to trusts. Most recently, in 1989, the Senate rejected the nomination of Senator John Tower, an event which many in the Senate will recall from their own memories.

This examination of the history demonstrates that it has been nearly a continuous custom of the Senate to confirm a president's nominees to the Cabinet in all but the very rarest of circumstances. These practices and precedents thus support the principle that the Senate owes the president substantial deference in the selection of the Cabinet.

I should also note, as some members of the committee have done, that all of President Clinton's Cabinet appointments were confirmed overwhelmingly, and usually unanimously, despite the fact that many Republicans strongly disagreed with their views. This included the view of former Attorney General Janet Reno in opposition to the death penalty, a view I strongly share with her, but which has enlisted the support of very, very few of my colleagues.

RPC Staff Contact: Judy Gorman, 224-2946